

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: 2009CA0477
LAWRENCE A. ROEHRICH )	EEOC NO.: 21BA82881
)	ALS NO.: 09-0683
Petitioner. )	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee Freeman, and Charles E. Box presiding, upon Lawrence A. Roehrich's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2009CA0477; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following grounds:

**COUNT A FOR LACK OF JURISDICTION**

**and**

**COUNT B AND COUNT C FOR LACK OF SUBSTANTIAL EVIDENCE**

In support of which determination the Commission states the following findings of fact and reasons:

1. On August 19 2008, the Petitioner filed a charge of discrimination with the Respondent in which he alleged that his former employer, the Village of Antioch ("Employer"), discharged him because of his disability, carpal tunnel syndrome (Count A), his age, 49 (Count B), and his sex, male (Count C), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On November 17, 2009, the Respondent dismissed Count A of the Petitioner's charge for Lack of Jurisdiction, and Count B and Count C of the charge for Lack of Substantial Evidence. On November 25, 2009, the Petitioner filed a timely Request.
2. The Petitioner was hired by the Employer on June 27, 2005, as a Building Inspector.
3. Two other building inspectors also worked for the Employer. They were both male, and both had been hired in 1996.

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<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

4. On August 15, 2008, the Employer informed the Petitioner that he would be laid off, effective August 29, 2008. In total the Employer states it laid off 15 employees in August 2008, including the Petitioner, due to budgetary shortfalls. The Employer stated it chose to lay off the Petitioner because the Petitioner had the least seniority among the other building inspectors.
5. The two male building inspectors whom the Employer did not lay off were 63 and 58 years old.
6. The Petitioner alleged in his charge that he was laid off because of his age, sex, and his disability, carpal tunnel syndrome.
7. When the Petitioner filed his charge with the Respondent, the Respondent provided the Petitioner with a medical questionnaire to be completed by a physician. Based on the answers provided by the physician in the medical questionnaire, the Respondent would determine if the Petitioner was disabled within the meaning of the Act. Further, it was the Petitioner's burden to establish that he was disabled within the meaning of the Act before the Respondent could investigate his disability discrimination allegations.
8. The Petitioner never submitted the required completed medical questionnaire to the Respondent.
9. In his Request, the Petitioner presents no argument or additional evidence relevant to the allegations of his charge.
10. In its Response, the Respondent asks the Commission to sustain its dismissal of Count A of the Petitioner's charge for lack of jurisdiction because the Petitioner failed to provide evidence that he was disabled within the meaning of the Act. The Respondent asks the Commission to sustain its dismissal of Counts B & C for lack of substantial evidence because there was no evidence sufficient to establish a *prima facie* case of either age or sex discrimination.

## **CONCLUSION**

The Commission concludes that the Respondent properly dismissed Count A of the Petitioner's charge for lack of jurisdiction. If the Petitioner's condition does not meet the definition of disability under the Act, there must be a finding of lack of jurisdiction. See 775 ILCS 5/1-103(l).

Section 1-103(l)(1) of the Act defines "disability" as a "determinable physical or mental characteristic of a person..." which is "unrelated to a person's ability to perform the duties of a particular job...." 775 ILCS 5/1-103(l)(1). In order to determine whether or not the Petitioner's condition meets the statutory definition of a disability, the Petitioner must provide the Respondent with some medical documentation establishing that the condition qualifies as a disability.

In this case, the Petitioner failed to provide the Respondent with the completed medical questionnaire or with any medical documentation to support his claim that his alleged physical condition (carpal tunnel syndrome) qualified as a disability within the meaning of the Act. Therefore, because the Petitioner failed to demonstrate that he was a disabled person within the meaning of the Act, Count A was properly dismissed for lack of jurisdiction.

The Commission also concludes that the Respondent properly dismissed Counts B and C of the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747 (March 7, 1995), 1995 WL 793258 (Ill.Hum.Rts.Com.)

In this case, the Petitioner has failed to provide sufficient evidence to establish a *prima facie* case of either age or sex discrimination. Generally, to establish a *prima facie* case of discrimination, the Petitioner must show: (1) that he is a member of a protected class; (2) that he was performing his work satisfactorily; (3) that he was subject to an adverse action; (4) and that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2<sup>nd</sup> Dist. 1994).

The Petitioner has failed to show that the Employer treated similarly situated employees outside the Petitioner's protected classes more favorably under similar circumstances. In fact, two male building inspectors who were significantly older than the Petitioner were not laid off by the Employer in August 2008. The Employer also laid off a female employee in August 2008. Given these facts, the evidence is insufficient to support a conclusion that the Employer was motivated by the Petitioner's age or sex when it laid him off in August 2008.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and

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the Village of Antioch, as Respondents with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

**STATE OF ILLINOIS**

**HUMAN RIGHTS COMMISSION**

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**Entered this 9<sup>th</sup> day of June 2010.**

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box